

REMARKS

This Amendment After Final is in response to a premature final Office action mailed on 30 March 2004 (Paper No. 18).

Status of Pending Claims

No amendments are made in this Response After Final. Thus, claims 38 through 81 are pending in the application.

Rejection of Claims 38-44 Under 35 U.S.C. §103(a)

Claims 38-44 are newly rejected under 35 U.S.C. §103(a) for alleged unpatentability over Goldberg *et al.*, U.S. Patent No. 6,196,146 in view of PR Newswire article, Chabrow, E. IPrint press release entitled "IPrint" Self-Service Printing", and what the Examiner asserts is "Official Notice" of five (5) distinct features of Applicant's claims. Applicant respectfully traverses this rejection for the following reasons.

A. The Examiner Failed To Consider The Subject Matter Of Rejected Claims 38 through 44 As A Whole.

Under U.S. practice, a patent must be issued to an applicant unless,

"the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was

made ...”¹

The Examining Staff has sought to examine these claims piecemeal, by asserting that various, diverse references, could be argued to teach various constituent components of these claims, and where the primary and secondary references were admitted by the Examining Staff to be lacking, the proposed combination relied upon “Official Notice” to supply the missing constituent component. Specifically, the Examiner’s proposed combination includes:

1. “Official Notice that the use of a password for accessing the customer’s estimate is old and well known in the art.”²
2. “Official Notice of the fact that storing customer order profile information on a remote database is old and well known in the art.”
3. “Official Notice that providing a customer contact information, including an e-mail address, is old and well known in the art.”
4. “Official Notice of the fact that selecting a service provider based on their geographical location is old and well known in the art.”
5. “Official Notice that these are common parameters (namely, a number of pages of the print job, a number of copies of the print

¹ 35 U.S.C. §103(a).

² Examiner’s Comments, page 15.

job, a type of binding of the print job) that are indicated by a customer when ordering a print job”

The impropriety in this style of examination lies in, among other deficiencies, the fact that almost all inventions are combination of old elements. Assuming *arguendo* that each of these individual items of “Official Notice” are in fact old and well known, the incorporation of these several items of “Official Notice” into the proposed combination to modify the primary reference begs the central issue of 35 U.S.C. §103(a) of whether, when the subject matter of each claim is **considered as a whole**, “the differences between the subject matter ... [of each claim] and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made ...”? ³The ethereal nature of the “Official Notice” not only lacks relevance to the **subject matter considered as a whole**, but there is no evidence of record here to even indicate that the use of each item of “Official Notice” could feasibly be incorporated into the primary reference without impermissibly preventing the primary reference from being operated in its intended mode of operation. In short, this rejection fails to comply with the dictate of 35 U.S.C. §103(a) to consider the subject matter of each claim **as a whole**, and instead, has improperly substituted a consideration of individual constituent features of the rejected claims in isolation from the remainder of those claims. Moreover, not only has this rejection failed to consider the subject matter of these claims “as a whole”, the diverse items of “Official Notice” that have been incorporated into

³ 35 U.S.C. §103(a).

the Examiner's proposed combination are ethereal and unconnected to the specific teachings of the primary reference; apparently those diverse items of "Official Notice" have been drawn the vast and amorphous body of all prior art, without considerations of relevance or materiality.⁴ Consequently, there is no basis in the evidence of record to justify the rejection of claims 38 through 44 under 35 U.S.C. §103(a). Withdrawal of this rejection is required.

B. There Is No Evidence Of Record Of Motivation For Modifying The Primary Reference As Required By The Examiner's Proposed Combination.

As is noted in the foregoing paragraphs, the Examiner's proposed combination relies upon five distinct instances of "Official Notice". The record of this application is devoid of evidence teaching any motivation for modifying the primary reference to conform to this "Official Notice"; instead the Examining Staff has substitute various platitudes, none of which are supported by evidence of record, to justify the modifications:

1. "Goldberg does not expressly teach providing a cost estimate for a printing job. However, the Examiner notes it would have been obvious to modify Goldberg to provide cost estimate for printing jobs in order to expand the scope of application of Goldberg."⁵

⁴ When patentability turns on the question of obviousness, the search for and analysis of the prior art included evidence to the finding of whether there is a teaching, motivation, or suggestion to select and combine the references relied upon as evidence of obviousness. *McGinley v. Franklin Sports, Inc.*, 262 F.3d 1339, 13521-52, 60 USPQ2d 101, 1008 (Fed. Cir. 2001).

⁵ Examiner's Comments, p. 13.

2. "Goldberg does not expressly teach providing a customized good comprising a printed product. However, because Goldberg provides cost estimates for customized products, it would have been obvious to apply Goldberg to the providing of cost estimates for printed products."⁶
3. "At the time of Applicants' invention, it would have been obvious to one of ordinary skill in the art, to modify Goldberg to include the teachings of PR Newswire because including an editor at said printing agency having access to software and hardware to monitor, evaluate and modify said document created by said customer at said user terminal and to store said modified document in a second memory at said printing agency would enable the customer to improve the quality of their documents."
4. "At the time of Applicant's invention, it would have been obvious to one of ordinary skill in the art, to modify Goldberg and PR Newswire to include a second memory unit storing the print data when the print data is in the final form, said second memory unit being in communication with said editing unit; and an output device receiving the print data in the final form from said second memory unit, and recording the print data in the final form on the recordable media in order to store customer's custom order parameters, and then reduce the order to its tangible requested form."
5. "Therefore, at the time of Applicant's invention, it would have been obvious to modify Goldberg, PR Newswire and Chabrow to include the use of a password in order to provide security to the customer's order information."
6. "Therefore, at the time of Applicant's invention, it would have been obvious, to modify Goldberg, PR Newswire and Chabrow

⁶ Examiner's Comments, p. 15.

to include a first memory unit storing the cost request and the identification data received from said server, said first memory unit being in communication with said server. This combination would enable customers to access their information at a later date.”

7. “Therefore, at the time of Applicant's invention, it would have been obvious to one of ordinary skill in the art, to modify Goldberg, Chabrow and PR Newswire to include the identification data corresponding to an e-mail address of the user in order to provide a convenient means for contacting customers.”
8. “At the time of Applicant's invention, it would have been obvious to one of ordinary skill in the art, to modify Goldberg, PR Newswire and Official Notice to include the teachings of Chabrow in order to outsource printing jobs when special printing needs are required.”⁷
9. “Therefore, at the time of Applicant's invention, it would have been obvious to one of ordinary skill in the art, to modify Goldberg, Chabrow and PR Newswire to include selecting the output device \geographically nearest to the user. This would provide the user with the most convenient pick-up location.”⁸
10. “At the time of Applicants' invention, it would have been obvious to one of ordinary skill in the art, to modify Goldberg, Chabrow and Official Notice to include the teachings of PR Newswire because this would enable the customer to improve the quality of his documents.”⁹

⁷ Examiner's Comments, p. 16.

⁸ Examiner's Comments, pp. 16-17

⁹ Examiner's Comments, p. 17

11. “At the time of Applicants' invention, it would have been obvious to one of ordinary skill in the art, to modify Goldberg, Chabrow and Official Notice to include the teachings of PR Newswire because including an editor at said printing agency having access to software and hardware to monitor, evaluate and modify said document created by said customer at said user terminal and to store said modified document in a second memory at said printing agency would enable the customer to improve the quality of their documents.”¹⁰
12. “Therefore, at the time of Applicant's invention, it would have been obvious to one of ordinary skill in the art, to modify Goldberg, Chabrow and PR Newswire to include a number of pages of the print job, a number of copies of the print job, a type of binding of the print job in order to enable customers to provide complete order information.”¹¹

It is fundamental under U.S. practice that rejections under 35 U.S.C. §103(a) “must be based on evidence comprehended by the language of that section.”¹² When patentability turns on the question of obviousness, “the central question is whether there is reason to combine [the] references”;¹³ this is a question of fact drawing on the *Graham* factors.¹⁴ Where for example, does the record show that it would be desirable “to expand the scope of application of Goldberg”, were to “enable the customer to improve the quality of their documents”, or to

¹⁰ Examiner's Comments, p. 17.

¹¹ Examiner's Comments, p. 18.

¹² *In re Grasselli*, 713 F.2d 731, 739, 218 USPQ 769, 755 (Fed. Cir. 1983).

¹³ *McGinley v. Franklin Sports, Inc.*, 262 F.3d 1339, 13521-52, 60 USPQ2d 101, 1008 (Fed. Cir. 2001).

¹⁴ *Graham v. John Deere Co.*, 383 U.S. 1, 17-18, 148 USPQ 459, 467 (1966).

include a “second memory unit storing the print data when the print data is in final form”, or to “include the use of a password in order to provide security to the customers order information”, or to “enable customers to access their information at a later date”, or “to provide a convenient means for contacting customers”, or “to outsource printing jobs when special needs are required”, or to “improve the quality of [the] customers documents”, or to “enable the customer to improve the quality of the documents”, or to “enable customers to provide complete order information”? Each of these statements have been used by the Examining staff to justify modification of the primary reference. Such desires, motivation and suggestion for modification of the primary reference are not taught in the secondary references however. These are simply “hindsight” assertions made in light of the express language of Applicant’s claims, and are unsupported by the art. This factual inquiry of whether to combine reference must be thorough and searching, and this inquiry must be based on objective evidence of record; it is reinforced in myriad decisions of the Federal Circuit, and may not be summarily dispensed with.¹⁵ Accordingly, absent the requisite “showing of a suggestion, teaching, or motivation to combine the prior references” in the record before the Examining Staff, a showing which is “an essential component of an obvious holding”,¹⁶ there is no basis for continuing this rejection of claims 38 through 44.

¹⁵ See, for example, *Brown & Williamson Tobacco Corp. v. Philip Morris Inc.*, 229 F.3d 1120, 1124-25, 56 USPQ2d 1456, 1459 (Fed. Cir. 2000).

¹⁶ *C.R. Bard, Inc. v. M3 Systems, Inc.*, 157 F.3d 1340, 1352, 48 USPQ2d 1225, 1232 (Fed. Cir.), and *In re Dembiczak*, 175 F.3d 994, 999, 50 USPQ2d 1614, 1617 (Fed. Cir. 1998).

Its withdrawal is respectfully requested.

C. The Examiner's Proposed Combination Fails To Make A *Prima Facie* Showing Of Obviousness Under 35 U.S.C. §103(a).

The Examiner admits that Goldberg '146 includes several remarkable deficiencies, and does not meet the definition provided by independent claim 38.

The Examiner's motivation for this proposed combination is flawed and factually incorrect. The Examiner relies upon the PR Newswire article to modify Goldberg '146 to include "an editor at said printing agency having access to software and hardware to monitor, evaluate and modify said document created by said customer at said user terminal ..." and asserts that the motivation for this modification of Goldberg '146 "would enable the customer to improve the quality of their documents." Paper No. 11, pg. 28. In fact, the Examiner's proposed combination would impermissibly destroy the intended mode of operation of Goldberg '146 which teaches editing, in step 68, as being done exclusively and solely by the user. See col. 4, line 6+. Moreover, the Examiner has misrepresented the teachings of the secondary reference; the PR Newswire discloses "web editing software", which "allows people to easily and collaboratively edit their web documents" in order to avoid the problem known as the "lost update problem." Goldberg '146 however, provides no editing by anyone other than the user; in step 54, the embroidery service provides a facsimile in lieu of a prototype, but defers any editing or modification of the facsimile to the user in step 68. The Examiner's proposed modification of Goldberg '146 would

impermissibly rob the user of this exclusivity, and ostensibly open the editing of the garment to the public. How this modification “would enable the customer to improve the quality of their documents” is unexplained in the Examiner’s action, because it is a garment, and not a document, that is created by Goldberg ‘146. Furthermore, this rejection is deficient because the Examiner neglects to identify precisely where this third party editing of the garment would occur in Goldberg ‘146; subsequent to the simulation modeling in step 54 or subsequent to the user’s editing in step 68 would interfere with the user’s creativity. Any subsequent third party editing would destroy that final creation. In short, this rejection is incomplete under the criteria of 37 CFR §1.104(b) and (c). Written clarification and allowance of an opportunity for Applicant to respond to the completed rejection is respectfully requested. Alternatively, withdrawal of this rejection and allowance of the rejected claims is solicited.

The Examiner has taken Official Notice of the use of a password for accessing a customer’s estimate and Official Notice of storing customer order profile information on a remote database. In accordance with 37 CFR §1.104 (a), (b) and (c), the Examiner’s affidavit detailing the data relied upon by the Examiner for this Official Notice is respectfully requested.

Rejection Of Claims 39-42 And 44 Under 35 U.S.C. §103(a)

Claims 39 through 42 and 44 were rejected under 35 U.S.C. §103(a) as rendered obvious, and unpatentable, over the Examiner’s proposed combination of Goldberg ‘146,

Chabrow, the PR Newswire article and the Examiner's Official Notice. Applicant respectfully traverses these rejections for the following reasons.

First, these claims all ultimately depend upon independent claim 38. The Examiner's proposed combination does not remedy the deficiencies noted in the foregoing paragraphs of this amendment, in the rejection of claim 38. Accordingly, this rejection is incomplete and improper. Its withdrawal is required.

Second, claim 39 defines, *inter alia*, correction of spelling. Goldberg makes no pretense of interfering with a customer's spelling; modification of Goldberg to provide correction of spelling would impermissibly destroy the intended mode of operation of Goldberg. Accordingly, this rejection of claim 39 is improper and may not stand.

Dependent claim 40 contemplates enabling the user to select "the output device geographically nearest to the user"; this feature is neither taught nor suggested by any of the applied references. It is difficult to understand how these references could be relied upon to render this feature of claim 40 obvious, when none of these references use the terms "geographically nearest to the user"? In view of the implausibility of the Examiner's rationale, withdrawal of this rejection is required. The Examiner has relied upon Official Notice as teaching geographic location and the selection of service based upon the geographic location. The Examiner is requested in accordance with 37 CFR §1.104 to provide his affidavit specifying the data upon which the Examiner has relied for this Official Notice, and to accord Applicant an opportunity to contradict and challenge the Examiner's data.

Claim 41 contemplates transmission of “edited print data through the Internet to the user after said editing unit performs the editing of the print data” and “the user receiving the edited data through the Internet and revising the edited print data and sending the revised print data to the server. This combination is not suggested by any of the Examiner’s references, and may not therefore be attributed to the Examiner’s proposed combination. The fact that the PR Newswire mentions, but does not teach, a system for collaboratively editing what is known as “web documents” is irrelevant to the issue of the obviousness of claim 41. The PR Newswire Paper acknowledges that its distributed authority and versioning standard will allow “users to conveniently manage Internet files and directories, including the ability to move and copy files, similar to the way word-processing files and directories are managed on a regular computer.” Pg. 2. What is missing from this reference is teaching or suggestion of editing “word-processing files and directories” by an editing unit that is defined as “being distinguishable from the user” (pg. 38, line 16). In fact, the web editing contemplated by the PR Paper allows collaborative editing of web documents, but neither teaches nor suggests modification of a service such as that provided by Goldberg ‘146, the primary reference, which enables the user to obtain the editor’s services. The Examiner should again consider that claim 38 separately and distinctly defines Applicant’s “editing unit” and “user”, although the user is not constituent component of claim 38. The Examiner’s pretense that the editing unit and the user are one in the same entity, is contrary to U.S. practice. Accordingly, there is no basis for making the Examiner’s proposed combination, the combination would destroy the intended mode of operation of Goldberg,

and the combination fails to make a *prima facie* showing of obviousness of claim 41.

Although Goldberg does generate a cost estimate, that cost estimate does not remedy the foregoing deficiencies noted in the Examiner's proposed combination. Accordingly, claim 42 is patentably distinguishable and allowable over the prior art.

In support of the rejection of claim 44, the Examiner argues that his Official Notice of attributes of the job such as the number of pages, the number of copies, and the type of binding, are old and well known. None of the references suggest these attributes. Moreover, the Examiner's Official Notice fails to remedy the deficiencies noted in the rejection of parent claim 38. Accordingly, claim 44 is deemed to be patentably distinguishable and allowable over the prior art.

Rejection of Claims 45, 46, 52 and 71 Under 35 U.S.C. §103(a)

Claims 45, 46, 52 and 71 are rejected under 35 U.S.C. §103(a) for alleged unpatentability over the Examiner's proposed combination of Farros, U.S. Patent No. 5,930,810 in view of Goldberg '146 and the PR Newswire press release. Applicant respectfully traverses this rejection for the following reasons.

A. The Examiner's Proposed Combination Fails To Make a *Prima Facie* Showing of Obviousness of the Apparatus Defined by Claims 45, 46, 52 and 71 Under 35 U.S.C.

In support of this rejection of claims 45, 46, 52 and 71, the Examiner wrote that Farros '810 taught an Internet printing apparatus, comprising:

“a printing agency, comprising a server disseminating a home page that, in response to an inquiry by a customer over the World Wide Web, provides instructions explaining how a customer can request a print job, and enables a customer to select and to modify attributes of said print job, said home page, said home page further comprising a form that may be accessed through a hyperlink, said form enabling a customer to request said print job of a first draft received from the customer (col. 2, lines 24-27 and 51-55; col. 4, lines 27-30; col. 7, lines 46-51 and 53-65; and col. 8, lines 15-17);

said printing agency comprising a memory storing a customer's choice of attributes for said print job and, storing a first draft of said print job and that is received from the customer via the World Wide Web (col. lines 14-20);

said printing agency comprising an editor connected to said memory to edit said first draft of said print job to create a first revision of said first draft (col. 8, lines 30-36 and 42-67; Fig. 4);

said memory being connected to said editor storing said finalized version of said print job (col. 11, lines 45-52); and

an output device connected to said second memory via network printing to download said finalized version onto a recording media at a location that is geographically compatible with the customer's choice (col. 2, lines 27-32)” (quoting from pages 18 and 19 of Paper No. 18).

First, neither this excerpt nor the language used in this excerpt is nowhere found in the Examiner's proposed combination; this language is found only in Applicant's pending claims. Consequently, the Examiner's proposed combination fails to make a *prima facie* showing of obviousness.

Second, the Examiner's understanding of the Examiner's proposed combination including Farros '810 is flawed. Farros '810 pertains to a print service that enables a customer, to:

- “chose to create a new order or to read in (and then modify) an existing order.” Col. 9, lines 22, 23.
- choose from among “any number of categories of product” ... “(such as business cards or personal calling cards).” Col. 9, lines 24-26.
- choose within the specific category, “a number of different layouts [that] are usually available.” Col. 9, lines 26, 27.
- make “at step 1016, a final visual verification of the print order [that] is displayed.” Col. 10, lines 62-64.

As explained in Farros (*see*, by way of example, column 4, beginning with line 20), this is a template-based system enabling the use to create “a number of types of printed products regularly used.” Figure 1 illustrates this “creation” of the print job in a single step 114, and subsequently in Figure 7, explains the different attributes of the print job that might be either changed or set by default for the printing job.

The Examiner ignores Applicant's definition in claim 45 of “a printing agency ... that, in response to an inquiry by a customer ... enables a customer to select and to modify attributes of said print job” in combination with Applicant's “printing agency ... storing a first draft of said print job composed by the customer independently of said printing agency as a work that is textually distinct from said attributes and that is received from the customer

via the World Wide Web, in combination with “said printing agency comprising an editor connected ... to receive from the customer via the World Wide Web, a second draft prepared by the customer in dependence upon said first revision” What the Examiner has done is to confuse the selection of the templates in the Examiner’s proposed combination, with several different features of claim 45; modification of those templates may not be read as teaching both enablement of the customer “to select and modify attributes” as well as creation of “a first revision of said first draft” that has been received by the printing agency and was “composed by the customer independent of said printing agency” as well as “a second draft prepared by the customer”. The Examiner has read too many features into a basic teaching of the proposed combination. Moreover, the Examiner has failed to address how selection of template attributes in the proposed combination might be simultaneously read as enabling the customer to modify attributes and to create a first revision of a first draft composed “by the customer independently of said printing agency”, as well as read to teach “a work that is textually distinct from said attributes.”¹⁷ These omissions in the proposed combination may not be ignored in determining obviousness; these distinctions advantageously endow Applicant’s apparatus with ability to handle more than “a number of types of printed products regularly used” as taught by the Examiner’s proposed combination. In view of the foregoing deficiencies and incompleteness in the Examiner’s proposed

¹⁷ The Examiner inaccurately asserts that the PR Newswire “teaches a system for collaboratively editing documents over the Internet.” Actually, this reference enables individuals sequential editing of successive versions of a document, and contemplates neither customers, estimation of cost of production of finished products. Its incorporation into the Examiner’s proposed combination is disingenuous.

combination, withdrawal of this rejection and allowance of claims 45, 46, 52, 54 and 71 is required.

Rejection of Claims 47-51 Under 35 U.S.C. §103(a)

Claims 47-51 are rejected under 35 U.S.C. §103(a) for alleged unpatentability over the Examiner's proposed combination of Farros '810 modified in view of Goldberg '146 and what the Examiner identified as "Official Notice." Applicant respectfully traverses this rejection for the following reasons.

First, in support of this rejection, the Examiner asserted without authority or citation of any art, that he took:

"Official Notice that determining whether or not to include a cover page and the type of bending to be used for a print job is old and well known in the art."

Applicant disagrees. In essence, the Examiner has improperly applied an impermissible point-of-novelty criterion to the determination of obviousness under 35 U.S.C. §103, and then begged the question of whether the Examiner's point-of-novelty, namely "determining whether or not to include ..." is obvious by taking "Official Notice that editing a customer's print job at a print agency connected to the customer via the Internet *is old and well known in the art.*" This is an impermissible application of 35 U.S.C. §103(a) which requires (1) an identification of "the differences between the subject matter sought to be patented and the prior art" and (2) a determination of whether "the subject matter *as a whole* would have been

obvious at the time the invention was made.” Paper No. 18 is therefore incomplete. In accordance with 37 CFR §1.104(b) and (c), the Examiner is respectfully requested to provide clarification and to explain:

- each of the “differences between the subject matter sought to be patented and the prior art”, as that subject matter is defined by independent claim 47.
- which combination of specific teachings in the prior art render the “subject matter” of claim 47 when taken “as a whole” obvious?
- additionally, the Examiner’s reliance upon “Official Notice” is improper and unfairly denies the Applicant the ability to examine the body of knowledge upon which that Official Notice is based and to distinguish the pending claims over that body of knowledge because the Examiner is relying upon his personal knowledge. In accordance with 37 CFR §1.104(d)(2), the Examiner is respectfully requested to provide the Examiner’s affidavit and in that affidavit describe the data as specifically as possible, and to support that data with the Examiner’s affidavit, in order to accord the Applicant an opportunity to contradict or explain the patentability of these rejected claims over the data and reference relied upon by the Examiner in his “Official Notice.”

Applicant submits that the *combination* of having a print agency electronically connected to a customer’s computer terminal via the internet, the print agency being able to print at a remote location, and the fact that editing takes place at the Internet print agency is neither old nor well known in the art, and it is not taught nor suggested by the prior art.¹⁸

Applicant submits that the notion that a traditional print shop may have editing services may not be relied upon in order to not infer that it is obvious under the “subject matter as a whole” criterion of 35 U.S.C. §103 to establish that the process defined by

¹⁸ These issues have not been addressed in Paper No. 18. The factual inquiry of whether to combine references must be thorough and searching under 35 U.S.C. §103(a), as has been explained in opinion such as *McGinely v. Franklin Sports, Inc.*, 262F.3d 1339, 60 USPQ2d 1001 (Fed. Cir. 2001).

Applicant's claim 47 is rendered obvious by the proposed modification of Farros '810. No matter how modified according to the Examiner's "Official Notice" of editing, the proposed modification of Farros '810 is devoid of either teaching or suggestion for responding to Applicant's print request containing attributes of a printing job by issuing "a cost estimate" and then "receiving a first draft of a customer's printing job". Instead, the proposed modification of Farros '810 including Goldberg '146 simply obtains and allows the customer to change or modify the attributes of the printing job, and then allows the user to verify those attributes; only then does the proposed modification of Farros '810 including Goldberg '146 discuss pricing and nowhere precedes the reception of the printing job with a cost estimate. Consequently, the proposed modification of Farros '810 is difficult and cumbersome for a user and requires that the printing job be completed before the user is given any inkling or notion of the cost. This requires to user to cancel the printing job and to re-start the printing job by selecting different menus, templates and modifications before the user is able to obtain the cost of the printing job. In contradistinction, claim 47 defines a process in which the attributes are first obtained, a cost estimate is readily issued and then the printing job itself is conveyed by the user to the agency and, unlike the proposed modification of Farros '810, the user receives the benefit of editing by the agency, a feature wholly lacking and neither appreciated nor suggested by the proposed modification of Farros '810. In view of these deficiencies in the Examiner's proposed modification of Farros '810, and the advantageous results flowing therefrom, claim 47 is patentably distinguishable and allowable over the prior art. Such action is respectfully requested.

Second, regarding claim 55, Applicant submits that Farros '810 does not disclose a printing agency and Farros '810 does not disclose any Internet connection to a print agency via the Internet. In Farros '810, all of the software needed to produce the document to be printed, the print order and the payment and quote are all done at either the customer's personal computer or a kiosk. The only exception to this is FIG. 4 of Farros '810, where the customer connects to software for producing the document and placing the print order via the internet *in an office environment*. This requires that customer to incur the expense of obtaining and maintaining that software before undertaking a printing task, an expense that a customer or user is able to avoid in the practice of Applicant's claim 55. Applicant submits that reference numeral 401 in Farros '810 is not a print agency but is merely a storage that can be accessed by others in the same office. Reference numeral 401 in FIG. 4 of Farros '810 is not an internet site with a web page or a home page as claimed by Applicant. The purpose of reference numeral 401 in FIG. 4 of Farros '810 is to avoid requiring each and every user in an office environment from having to store the software to produce the document and the storage of the document itself to be printed at a user's personal computer. FIG. 4 of Farros '810 enables people in an office environment to access the software, not enabling the entire world wide web to access the software. Thus, it is submitted that FIG. 4 of Farros '810 does not have a home page and does not provide access to all internet users in the world wide web access to the software needed to create a document, to get a price quote or to submit a job order to a remote printer. In view of these distinctions and the noted benefits flowing therefrom, claim 55 is patentably distinguishable and allowable over the Examiner's

proposed combination.

Rejection of Claim 53 Under 35 U.S.C. §103(a)

Claim 53 are rejected under 35 U.S.C. §103(a) for alleged unpatentability over the Examiner's proposed combination of Farros '810 modified in view of Goldberg '146, the PR Newswire press release and Chabrow. Applicant respectfully traverses this rejection for the following reasons.

A. The Examiner's Proposed Combination Fails to Make a *Prima Facie* Showing of Obviousness Under 35 U.S.C. §103(a)

In support of this rejection, the Examiner inaccurately asserts that:

"Farros suggest[s] incorporating an editing step comprising correcting misspellings, correcting typographical errors, and correcting unreadable characters due to different software computer programs and different font environment in that Farros disclose[s] having a user perform a final verification of a print job order (col. 3, lines 10- 14)" (emphasis supplied).

This is a fanciful and improper attribution of the language of Applicant's claim to the Examiner's proposed combination, in a misguided effort to reconstruct the art in the light provided by Applicant alone. The portion of the primary reference incorporated into the Examiner's proposed combination cited by the Examiner in column 3, teaches, in its entirety,

"The printing system allows for final verification of the design as well as providing billing options and transmitting the billing information, shipping information as well as the design to the remote printing facility. The printing system may be easily updated with new forms to expand the number of designs which

may be created.”¹⁹

Nowhere does the Examiner’s proposed combination teach “correcting misspellings, correcting typographical errors” as asserted by Paper No. 18. Moreover, such correction would impermissibly interfere with the intended and disclosed mode of operation of the primary reference, which allows:

“different aspects of the product which may each be changed by the user to personalize the printed product”²⁰

The inaccurately suggested “editing step comprising correcting the step comprising correcting misspellings, correcting typographical errors” would impermissibly prevent and interfere with customers’ attempts at customerization involving misspelling, different typographic formats and other items regarded by editors as “errors” and “misspellings”. In short, not only is there an absence of this feature in the Examiner’s proposed combination, its creation would impermissibly destroy the intended mode of operation of the primary reference. This, by itself, is convincing indicia of the non-obviousness of claim 53.

Rejection of Claims 55-57, 60-62, 69 and 70 Under 35 U.S.C. §103(a)

Claims 55-57, 60-62, 69 and 70 are rejected under 35 U.S.C. §103(a) for alleged unpatentability over the Examiner’s proposed combination of Farros ‘810 modified in view

¹⁹ Farros ‘810, column 3, lines 10-16.

²⁰ Column 2, lines 54-55.

of Official Notice and the PR Newswire press release. Applicant respectfully traverses this rejection for the following reasons.

A. The Examiner's Proposed Combination Fails to Make a *Prima Facie* Showing of Obviousness of the Apparatus Defined by Claims 55-57, 60-62, 69 and 70 Under 35 U.S.C. §103(a).

First, in support of this rejection, the Examiner asserted without authority or citation of any art, that he took:

“Official Notice that receiving an online estimate for a service is old and well known in the art.”

Applicant disagrees. The type of that “service” and the technique for integrating the rendition of the “online estimate” are critical features which determine the viability of a process; consequently, such distinctions as defined by the rejected claims may not be ignored under 35 U.S.C. §103(a). In essence, the Examiner has improperly applied an impermissible point-of-novelty criterion to the determination of obviousness under 35 U.S.C. §103, and then begged the question of whether the Examiner's point-of-novelty, namely “editing a customer's print job at a print agency” is obvious by taking “Official Notice that editing a customer's print job at a print agency connected to the customer via the Internet *is old and well known in the art.*” This is an impermissible application of 35 U.S.C. §103(a) which requires (1) an identification of “the differences between the subject matter sought to be patented and the prior art” and (2) a determination of whether “the subject matter *as a whole* would have been obvious at the time the invention was made.” Paper No. 11 is therefore

incomplete. In accordance with 37 CFR §1.104(b) and (c), the Examiner is respectfully requested to provide clarification and to explain:

- each of the “differences between the subject matter sought to be patented and the prior art”, as that subject matter is defined by independent claim 11.
- which combination of specific teachings in the prior art render the “subject matter” of claim 11 when taken “as a whole” obvious?
- additionally, the Examiner’s reliance upon “Official Notice” is improper and unfairly denies the Applicant the ability to examine the body of knowledge upon which that Official Notice is based and to distinguish the pending claims over that body of knowledge because the Examiner is relying upon his personal knowledge. In accordance with 37 CFR §1.104(d)(2), the Examiner is respectfully requested to provide the Examiner’s affidavit and in that affidavit describe the data as specifically as possible, and to support that data with the Examiner’s affidavit, in order to accord the Applicant an opportunity to contradict or explain the patentability of these rejected claims over the data and reference relied upon by the Examiner in his “Official Notice.”

Applicant submits that the *combination* of having a print agency electronically connected to a customer’s computer terminal via the internet, the print agency being able to print at a remote location, and the fact that editing takes place at the internet print agency is not old and well known in the art and it is not taught nor suggested by the prior art, the PR Newswire is devoid of both a “print agency” and “editing by a print agency”. Applicant submits that the notion that a traditional print shop may have editing services may not be relied upon in order to not infer that it is obvious under the “subject matter as a whole” criterion of 35 U.S.C. §103 to establish that the process defined by Applicant’s claim 11 is rendered obvious by Farros ‘810. Moreover, the “distributed authoring and versioning” advocated by the *PR Newswire* may not be incorporated into the primary reference without impermissibly

destroying the intended mode of operation of the primary reference because “distributed authoring and versioning” is the antithesis of both the function and operation of a “print agency” and of Applicant’s “said printing agency editing said first draft” in combination with “generating a revised document based upon revisions to said first draft made by the customer.” No matter how modified according to the Examiner’s “Official Notice” of either editing or receiving an online estimate, Farros ‘810 is devoid of either teaching or suggestion for responding to Applicant’s print request containing attributes of a printing job by issuing “a cost estimate” and then “receiving a first draft of a customer’s printing job”. Instead, Farros ‘810 simply obtains and allows the customer to change or modify the attributes of the printing job, and then allows the user to verify those attributes; only then does Farros ‘810 discuss pricing and nowhere precedes the reception of the printing job with a cost estimate. Consequently, the proposed combination including Farros ‘810 is difficult and cumbersome for a user and requires that the printing job be completed before the user is given any inkling or notion of the cost. This requires to user to cancel the printing job and to re-start the printing job by selecting different menus, templates and modifications before the user is able to obtain the cost of the printing job. In contradistinction, claim 55 defines a process in which the attributes are first obtained, a cost estimate is readily issued and then the printing job itself is conveyed by the user to the agency and, unlike Farros ‘810, the user receives the benefit of editing by the agency, a feature wholly lacking and neither appreciated nor suggested by Farros ‘810. In view of these deficiencies in the Examiner’s proposed combination of Farros ‘810, and the advantageous results flowing therefrom, claim 55 is

patentably distinguishable and allowable over the prior art. Such action is respectfully requested.

Second, regarding claim 55, Applicant submits that the proposed combination including Farros '810 does not disclose a printing agency and Farros '810 does not disclose any Internet connection to a print agency via the Internet. In Farros '810, all of the software needed to produce the document to be printed, the print order and the payment and quote are all done at either the customer's personal computer or a kiosk. The only exception to this is FIG. 4 of Farros '810, where the customer connects to software for producing the document and placing the print order via the internet *in an office environment*. This requires that customer to incur the expense of obtaining and maintaining that software before undertaking a printing task, an expense that a customer or user is able to avoid in the practice of Applicant's claim 55. Applicant submits that reference numeral 401 in Farros '810 is not a print agency but is merely a storage that can be accessed by others in the same office. Reference numeral 401 in FIG. 4 of Farros '810 is not an internet site with a web page or a home page as claimed by Applicant. The purpose of reference numeral 401 in FIG. 4 of Farros '810 is to avoid requiring each and every user in an office environment from having to store the software to produce the document and the storage of the document itself to be printed at a user's personal computer. FIG. 4 of Farros '810 enables people in an office environment to access the software, not enabling the entire world wide web to access the software. Thus, it is submitted that FIG. 4 of Farros '810 does not have a home page and does not provide access to all internet users in the world wide web access to the software

needed to create a document, to get a price quote or to submit a job order to a remote printer. In view of these distinctions and the noted benefits flowing therefrom, claim 55 is patentably distinguishable and allowable over the Examiner's proposed combination.

Third, the Examiner's proposed combination fails to make a *prima facie* showing of the obviousness of claim 55. In this Official Notice, the Examiner maintains that the step of receiving an online estimate is old and well known in the art. Applicant submits that receiving an on-line estimate in the context of Applicant's claim 55 is wholly absent from the Examiner's proposed combination of Farros '810 and Official Notice. Applicant states in claim 55 a customer at a computer connected to a print agency that provides editing and cost estimates for a print job that is then sent to a third, remote location for printing. Applicant submits that the cost estimate in combination with the editing at the print agency is neither taught nor suggested by the prior art. These distinctions may not be ignored in making a determination of obviousness.

Fourth, claim 55 defines an editor at the print agency edits the customer's draft. The Examiner states that column 2, lines 25-30 and column 10, lines 62-67 of Farros '810 teach this limitation. Applicant notes that Farros '810 does teach having the customer, as distinguished from Applicant's "print agency", at the customer's terminal to modify the document. Applicant submits however, that there is no editing in Farros '810 that is carried out at any print agency or by any other entity other than the user, or customer. When making a determination of obviousness *vel non*, the Examiner may not either arbitrarily gloss over the existence of Applicant's *customer* and *print agency* and their respective aspects defined

by claim 55, nor mix those distinct aspects. In view of the complete failure of Farros '810 to either recognize the need for Applicant's allocation of the several features of a print manufacturing process to more parties than solely the user, and to address that need, claim 55 is patentably distinguishable and allowable over the prior art. The fact that both the Examiner and Farros '810 have failed to appreciate this allocation of labor, regardless of who performs which specific task, is evidence of the impropriety of this rejection as well as the non-obviousness of Applicant's process. Its withdrawal and allowance of claim 55 is required.

Fifth, Applicant submits that the editor in Applicant's claims needs to both be knowledgeable of editing skills that were in existence before computers and the internet and must also be knowledgeable of computer software, of digital imaging, of printing, and of the internet and much more, a combination of skills that did not exist in the past, making this fifth limitation neither taught nor suggested by the prior art. Furthermore, the editor, unlike the customer, specializes in electronic file and image editing, a feature that is not old and well known in the prior art. The customer does not have these skills because the customer does not specialize in these areas. Therefore, the notion of having an editor edit a document that contains text and images is not taught nor fairly suggested by the prior art.

B. The Examiner Failed To Consider The Subject Matter Of Rejected Claims 38 through 44 As A Whole.

Under U.S. practice, a patent must be issued to an applicant unless,

“the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made ...”²¹

The Examining Staff has sought to examine these claims piecemeal, by asserting that various, diverse references, could be argued to teach various constituent components of these claims, and where the primary and secondary references were admitted by the Examining Staff to be lacking, the proposed combination relied upon “Official Notice” to supply the missing constituent component. Specifically, the Examiner’s proposed combination improperly paraphrased and abbreviated the rejected claims. As one exemplar of this impropriety, the Examiner asserts that the proposed combination teaches “receiving at said printing agency a first draft of a customer’s print job over the Internet”. In actuality however, the rejected claims expressly define a process step of “receiving at said printing agency, *subsequent to issuing said cost estimate*, a first draft of a customer’s print job *corresponding to said cost estimate ...*” In short, the Examiner has improperly failed to consider the subject matter claimed “as a whole”, in accordance with 35 U.S.C. §103(a). The rejection is therefore improper, and must be withdrawn.

Rejection of Claims 58-59 and 63 Under 35 U.S.C. §103(a)

Claims 58-59 and 63 are rejected under 35 U.S.C. §103(a) for alleged unpatentability

²¹ 35 U.S.C. §103(a).

over the Examiner's proposed combination of Farros '810 modified in view of Official Notice, the PR Newswire press release and Chabrow. Applicant respectfully traverses this rejection for the following reasons.

The Examiner again inaccurately, and improperly asserts that "Farros suggest[s] incorporating and editing step comprising correcting misspelling, correcting typographical errors" The Examiner's reference to column 3, lines 10-14 is widely inaccurate and misleading. Moreover, the Examiner's proposed combination fails to remedy the deficiencies noted in the rejection of parent claim 55. Accordingly, withdrawal of this rejection is required.

Rejection of Claims 64, 66, 72 and 73 Under 35 U.S.C. §103(a)

Claims 64, 66, 72 and 73 are rejected under 35 U.S.C. §103(a) for alleged unpatentability over the Examiner's proposed combination of Chabrow modified in view of the PR Newswire press release. Applicant respectfully traverses this rejection for the following reasons.

A. Chabrow Does Not Constitute *Prior Art* Under 35 U.S.C. §102(b)

First, the Eric Chabrow *InformationWeek*, 102 ostensibly was published on or about the 13th of December 1999. Applicant's claim for priority extends from the 13th of October 2000. There is no evidence of record establishing that Eric Chabrow reference is available as prior art under 35 U.S.C. §102, as a publication "more than one year prior to the date of the application for patenting in the United States." Withdrawal of this rejection is therefore

requested.

B. The Examiner's Proposed Combination Fails To Make a *Prima Facie* Showing of Obviousness Under 35 U.S.C. §103(a).

Chabrow does not expressly teach

“said printing agency comprising an editor” and “said printing agency returning a first draft of said document to the corresponding one of the users, and disposed to generate a final draft of said document in response to reception of a revision of said first draft from the corresponding one of the users.”

The Examiner relies upon the PR Newswire to remedy the deficiency of Chabrow and teach “independently of said printing agency.” The Examiner ignores however, that nothing in PR Newswire either uses a printing agency or the fact that incorporation of a printing agency into the PR Newswire interrupts the “distributed authoring and versioning process which enables Web users in distance locations “to write, edit and save shared documents without scuttling each other’s work.” Consequently, the Examiner’s proposed combination lacks Applicant’s “printing agency ... disposed to generate *a final draft* of said document in response to reception of a revision of said first draft from the corresponding one of the users.” In contradistinction, the Examiner’s proposed combination ostensibly generates a plurality of first drafts and is dedicated to owning any generation of “a final draft ... in response to reception of all the revision from said first draft from the corresponding one of the users.”

Eric Chabrow pertains to an article in “Information Week” that discusses a website

“www.iprint.com” that enables printing of images and/or text on a variety of media. www.iprint.com doesn’t do its own printing but transmits orders over the internet to commercial printers to be fulfilled. Like Farros ‘810, there is no editor at the place where the customer submits the document to provide professional services for the customer.

The Examiner’s reading of Chabrow is technically inaccurate. Chabrow states that it provides a process for “reducing prepress costs”, and discloses nothing more. This is the same “prepress process” disclosed in Fig. 7 of Farros ‘810, preceding the manufacturing of the product subsequent to step 728 of Farros ‘810. It is noteworthy that all of the “prepress process” is performed by the user, or customer, and that there is no editing performed either by Chabrow or by Farros ‘810. In short, the Examiner’s proposed combination is nothing more than disclosed by Farros ‘810, with the software allowing “customers [to] design, proofread and order personalized business cards, stationery, checks, rubber stamps, sticky notes, labels, and novelty gifts such as golf balls and coffee mugs [and to ... also] import graphics as well as adjust layouts, fonts, and ink colors to customize print products²²” via either a kiosk terminal or a personal computer terminal, in an entirely user controlled transaction extending from the user initiated prepress selection of the (1) “entry of textural information (personal information)” and verification in step 1002,²³ of the (2) selection of “the quantities of each orderable product” in step 1004,²⁴ and the selection of the (3) product

²² Chabrow, 4th paragraph.

²³ Farros ‘810, column 10, lines 51, 52.

²⁴ Farros ‘810, column 10, lines 54, 55.

type,²⁵ (4) category of product,²⁶ (5) layout of the chosen category,²⁷ and designation of the attributes of the category in the plurality of options²⁸ presented to the user in step 1006,²⁹ to completion and submission of the order by the user in step 1012.³⁰ Neither taught nor suggested by Farros '810 is any division of labor made by Applicant's claim 64; these tasks are preformed solely and entirely by the user in response to a plurality of templates and menus. Neither Chabrow nor Farros '810 disclose or suggest "an editor editing a manuscript submitted by a user" in combination with "returning said document to the user" and "receiving a revision of said document from the user, in combination with Applicant's "server accessible via the Internet."

The Examiner's singular inability to contemplate the distinction between the software taught by the primary and secondary references, and the user, or customer, who alone controls and selects, modifies and verifies a product using that software without the assistance of either Applicant's "printing agency" or "editor" as set forth in rejected claim 64, is telling evidence that, on the instant record demonstrates, the impropriety of the rejection of claim 20; accordingly, allowance of claim 64 is indicated. Similarly, the

²⁵ Farros '810, column 10, line 55.

²⁶ Farros '810, column 9, lines 23, 24.

²⁷ Farros '810, column 9, line 25.

²⁸ Farros '810, steps 1007-1011, column 10, line 56.

²⁹ Farros '810, column 10, lines 60-67.

common inability of both Chabrow and Farros '810, as well as the Examiner, to either appreciate a need for Applicant's "user computer", "printing agency" and "editor" as set forth in claim 64, or the singular inability of both Chabrow, Farros '810 and the Examiner to appreciate the beneficial contribution enjoyed by a user at Applicant's "user computer" with Applicant's division of labor between Applicant's "user computer", "printing agency" and "editor", and Applicant's combination with an allocation of labor between the user and a printing agency is further and additional convincing evidence on the record of the non-obviousness of claim 64. Moreover, the Examiner's inability to understand that a claim which distinctly defines separate constituent elements, is telling of the impropriety of the rejection. The Examiner can not read distinct components as comprising one in the same element. In view of this impropriety, the foregoing omissions in the Examiner's proposed combination, the advantages intrinsic in any allocation of labor between different constituent components of a claim, as well as the absence of a *prima facie* showing of obviousness, withdrawal of this rejection is required.

C. The Examiner's Propose Combination Impermissibly Prevents the Primary Reference From Operating in Its Intended Mode of Operation.

Claim 64 defines, *inter alia*, "said printing agency comprising an editor editing a manuscript composed" The primary reference however, is a singular effort for "reducing prepress cost". As explained by the primary reference,

"If most orders don't go through untouched"

In other words, any modification of the primary reference to incorporate "editing" is contrary

to and impermissibly destroys the intended mode of operation of the primary reference. This alone constitutes convincing evidence of the non-obviousness of claim 64. Withdrawal of this rejection is therefore required.

Rejection of Claims 65 and 68 Under 35 U.S.C. §103(a)

Claims 65 and 68 are rejected under 35 U.S.C. §103(a) for alleged unpatentability over the Examiner's proposed combination of Chabrow modified in view of the PR Newswire press release and Farros '810. Applicant respectfully traverses this rejection for the following reasons.

A. The Examiner's Proposed Combination Fails To Make a *Prima Facie* Showing of Obviousness of Claims 65 and 68 Under 35 U.S.C. §103(a).

In support of this rejection the Examiner asserts that:

“a second memory for storing said finalized document after editing would provide a means for transmitting the finalized document to the printing agency”³¹

Wholly absent from the Examiner's proposed combination, is either teaching or suggestion of Applicant's second memory, as well as any suggestion of advantageousness of incorporating Applicant's “second memory” into the system defined by parent claim 64. Consequently, this rejection is incomplete and can not be maintained.

³¹ Examiner's Comments, p. 33.

Rejection of Claims 67 and 74 Under 35 U.S.C. §103(a)

Claims 67 and 74 are rejected under 35 U.S.C. §103(a) for alleged unpatentability over the Examiner's proposed combination of Chabrow modified in view of the PR Newswire press release and Official Notice. Applicant respectfully traverses this rejection for the following reasons.

Basically, the proposed combination relied upon to reject claims 67 and 74 fails to remedy the deficiencies noted in parent claims 64 and 72. Consequently, withdrawal of this rejection is required.

Rejection of Claims 75-81 Under 35 U.S.C. §103(a)

Claims 75-81 are rejected under 35 U.S.C. §103(a) for alleged unpatentability over the Examiner's proposed combination of Chabrow modified in view of the PR Newswire press release, Goldberg '146 and Official Notice. Applicant respectfully traverses this rejection for the following reasons.

A. Chabrow is Unavailable as Prior Art Under 35 U.S.C. §102(b)

As earlier explained, Chabrow does not constitute "Prior Art" which might be applied to support any rejection of any claims in this application. Withdrawal of this rejection is therefore required.

B. The Examiner's Proposed Combination Fails To Make a *Prima Facie* Showing of Obviousness Under 35 U.S.C. §103(a).

The Examiner recognizes that Chabrow does not teach “sending a cost request from a user through the Internet to the print service”, and admits that Goldberg ‘146 fails to “teach when the cost request is received by the print service, storing the cost request.” The Examiner improperly relies upon “Official Notice” that “storing service order price information in a file is old and well known in the art” without citation or other authority. As was earlier explained to the Examiner in Applicant’s earlier filed response as well as in this paper, the availability of cost estimates is crucial to the practicality and operability of a consumer oriented process. The failure of the Examiner to focus specifically upon the language of the pending claims negates this reliance upon “Official Notice”. Accordingly, withdrawal of this rejection is required.

Request Under 37 C.F.R. §1.104(d)(2)

Pursuant to 37 C.F.R. §1.104(d)(2), Applicant requests the affidavit of the Examiner for each item of “Official Notice” asserted in Paper No. 18, in order to enable Applicant to contradict or explain the deficiencies in that knowledge, as contemplated by §1.104(d).

Applicant notes that this action is prematurely made final. By way of example, independent claim 38, among other claims, was not amended; in Paper No. 18 however, the Examiner withdrew the previous rejection and substituted a new rejection. This unfairly denies Applicant an opportunity to respond to that rejection. That unfairness is compounded in this application where the Examiner relies upon “Official Notice” for facts and knowledge of the Examiner that was not mentioned in Paper No. 11, thereby denying Applicant an


opportunity to either explain or contradict the Examiner's "Official Notice". Withdrawal of the designation of Paper No. 18 as "final" is therefore requested.

In view of the above, all claims are deemed to be allowable and this application is believed to be in condition to be passed to issue. Should any questions remain unresolved, the Examiner is requested to telephone Applicant's attorney.

A petition for a three month extension of time and an Applicant's check in the amount of \$475.00 (**SMALL ENTITY**) drawn to the order of Commissioner accompanies this response. Should the petition become lost, the Commissioner is requested to treat this paragraph as a petition for an extension of time, and should the check become lost, be deficient in payment, or should other fees be incurred, the Commissioner is authorized to charge Deposit Account No. 02-4943 of Applicant's undersigned attorney in the amount of such fees.

In addition, a Notice of Appeal and its appropriate fee accompany this response. Should the Notice become lost, the Commissioner is requested to treat this paragraph as a Notice of Appeal, and should the check become lost, be deficient in payment, or should other fees be incurred, the Commissioner is authorized to charge Deposit Account No. 02-4943 of Applicant's undersigned attorney in the amount of such fees.

Respectfully submitted,



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